

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



DOCKET No. 75 - 1053

In The

UNITED STATES COURT OF APPEALS

For the Second Circuit

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UNITED STATES OF AMERICA,

Appellee

vs.

ERNEST HARVEY, JUNIOR,

Appellant

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On Appeal from the United States District Court  
for the District of Vermont

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APPELLANT'S APPENDIX C

Bennett E. Greene, Esquire  
Attorney for the Defendant-Appellant,

Appointed

(GOVERNMENT'S CLOSING ARGUMENT)

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**PAGINATION AS IN ORIGINAL COPY**

## GOVERNMENT'S CLOSING ARGUMENT - Gray

1 RETURNED TO THE COURT ROOM)

2 THE COURT: Is the Government ready  
3 for closing argument?

4 MR. GRAY: Yes, Your Honor. May it  
5 Please the Court, Mr. GREENE, ladies and gentlemen of the  
6 jury, we come now to a very important part of this case.  
7 It's the part of the case where the lawyers have an oppor-  
8 tunity to talk to you and discuss with you and to comment  
9 on the evidence.

11 And first, the Government has an  
12 opportunity to talk and I'll do that, and then the defendant,  
13 whose attorney, Mr. GREENE, will be arguing to you, and  
14 then Mr. COOK will speak again briefly on behalf of the  
15 Government. And after all, the Government has the burden  
16 of proof in this case, and it's very high burden and we  
17 recognize that. Mr. COOK will have a chance to respond to  
18 Mr. GREENE's argument.

20 And then after the lawyers have finished  
21 talking to you, it's the function of the Court, Judge Coffrin,  
22 to tell you about the law you're to apply to the facts that  
23 you find in this case.

24 We will not invade that function, we will  
25 not talk about the law ourselves except insofar as it's  
26 necessary to discuss the facts in the case. I think I misspoke

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1 a moment ago. We won't discuss the law insofar as it is  
2 necessary to understand the facts.

3 The purpose, of course, is so that you  
4 can understand those facts fit the charge so the Government  
5 can demonstrate to you in argument how we've met our burden  
6 of proof in this case.

7 We intend to be quite brief. This has  
8 been a relatively long trial, but I'm confident that the  
9 evidence is fairly fresh in your minds and also confident,  
10 ladies and gentlemen, that you will find that the evidence  
11 in this case speaks for itself, and even if no lawyer  
12 were to talk to you in this case, you would be able to reach  
13 the right result.

14 Basically, there are two groups of  
15 charges you have to consider; those charges relating to the  
16 burglary and the facts surrounding the burglary and they  
17 are Counts 1, 2, 3, and 4; and then the second group, only  
18 a single charge, is Count 6. That's the one that relates  
19 to the silencing and the death of Byron NUTBROWN.

20 I want to talk first about the counts  
21 and the facts that relate to the burglary at Lavalley's,  
22 then I'll come to the civil rights count.

23 Essentially, count 1 charges, as I  
24 think we outlined in our opening statement, that there was

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1 an agreement between Mr. HARVEY and someone, and I think  
2 you can see who the agreement was between, Mr. DUNHAM and  
3 Mr. KIBLIN, to violate the law by burglarizing Lavalley's  
4 Lumber Yard.

5 The Court will tell you that you must  
6 find that the agreement encompassed at least one of the  
7 three objects named in the indictment, and the three objects  
8 named in the indictment are that it was part of the conspiracy  
9 that the conspirators would transport stolen property in  
10 interstate commerce valued greater than five thousand dollars,  
11 (\$5,000) and that's important because that makes it a  
12 Federal charge.

14 The second object, is that it was part  
15 of the conspiracy that the defendant or the conspirators  
16 would transport stolen dynamite in interstate commerce  
17 knowing it to be stolen; and the third object, is that the  
18 conspirators would transport dynamite for illegal or  
19 destructive purposes; for example, we would submit, to  
20 blow a safe at Lavalley's.

22 Now, I believe the Court will instruct  
23 you and I think I'm repeating myself here, that in substance,  
24 all you have to do is find that one of these objects existed,  
25 but I further submit on the proof in this case, you can find  
26 that all three of these objects existed and that the conspiracy

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1 or the agreement of which Mr. HARVEY was a part, contemplated  
2 the violations of all three of these laws.

3 We also must find in this Count, there  
4 was an overt act, that is to say, an agreement itself isn't  
5 a crime; you can sit down, have an agreement, generally  
6 speaking, if you don't do anything about it, the law at  
7 least in this statute doesn't punish that. You have to  
8 find that at least one of the co-conspirators did something  
9 to carry out that agreement.  
10

11 In this case, I submit to you, ladies  
12 and gentlemen, you will have no trouble finding that you  
13 know what happened; you know they went over to New Hampshire;  
14 we know at least what they tried to do, and to a certain  
15 extent, succeeded in doing, because the dynamite transported  
16 may not have succeeded in getting the money out of the safe  
17 and getting that back to Vermont, but I believe the Court  
18 will charge that you don't even have to be successful as  
19 long as you take some steps, some acts, towards that  
20 conspiracy.  
21

22 Counts 2, 3, and 4 all involve dynamite.  
23 Count 2 charges that Mr. HARVEY engaged in the transporta-  
24 tion of dynamite with the knowledge and intent to use the  
25 dynamite or that the dynamite would be used to destroy  
26 property; pretty simple, I don't think I even have to comment  
27

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any further on the charge and on the proof of the matter.

2 Count 3, that there was interstate  
3 transportation of dynamite by a person who has previously  
4 been convicted of a felony, and we all know from the  
5 evidence in the case, and Mr. GREENE conceded to you in his  
6 opening statement, that Mr. HARVEY has been previously  
7 convicted of a felony and that makes it a crime for a  
8 convicted felon to be transporting dynamite, to be handling  
9 dynamite in the manner charged. Just so there's no question  
10 about it, when you get into the jury room, you might want  
11 to take a look at Exhibit "7" which was passed around to you  
12 in kind of a hurry, and that is an official court record,  
13 you can see all the seals on it, and although there was a  
14 lot of matter on here about where it was charged and so  
15 forth and so on, check the back page and you will see that  
16 it confirms that Mr. HARVEY was convicted of burglary  
17 which was a felony inasmuch as the potential penalty is  
18 more than a year.

21 And finally Count 4, again, the dynamite  
22 count, charges that Mr. HARVEY transported or received, and  
23 there's some other words in there, dynamite knowing that it  
24 was stolen; again, pretty simple; did he know it was stolen;  
25 and did he transport it as charged.

For reasons you needn't consider, Count 5

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1 will not be before you. When I come back to the indictment  
2 again, I'll be talking about Count 6.

3 But first, I'm going to talk about  
4 what can  
5 the facts as they relate to/I think we/call the Lavallee  
6 counts; count 1, the conspiracy count, and the three dynamite  
7 charges, all of which surround that event.

8 What do the facts show with respect to  
9 these three charges? We submit they're clear and really  
10 do speak for themselves. But in substance, they show that  
11 &  
12 Mr. KIBLIN,/Mr. HARVEY agreed to knock off Lavallee's  
13 and DUNHAM was in on it too. Isn't that what it comes down  
14 to?

15 Now, let me talk a bit about an agreement.  
16 There was no written agreement in this case, no contract  
17 between parties, but when you sit down to knock off a safe,  
18 you don't write it out; you don't set forth in particularity  
19 all the terms. The question you have to decide is based  
20 upon all the facts that you know, was there an agreement, was  
21 there an understanding, was there a common undertaking,  
22 common purpose, with respect to this project? Again, I submit  
23 that the facts are pretty clear and speak for themselves.

24 What was the nature of this agreement,  
25 because you have to examine that as to see whether it was an  
agreement in violation of the law, and whether it was the

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1 agreement in violation of the law charged in Count 1.

2 Remember that I said that one of the  
3 purposes of the conspiracy was interstate transportation  
4 of stolen property in excess of five thousand dollars.  
5 Do you remember what George KIBLIN said about that? He  
6 said he told them because he knew the place; really, it was  
7 his idea, have to face up to that, there would be at least  
8 ten thousand dollars in there, and although there wasn't a  
9 specific agreement as to how it would be split, it was his  
10 understanding based on previous experience, that it would be  
11 split evenly. That means, taking that at its face, that  
12 at least two thirds of the money was going back to Vermont  
13 'cause that's where DUNHAM and HARVEY were from; and if  
14 you throw in Mr. NUTBROWN, and I don't know whether you  
15 should or you shouldn't, it's up to you to decide whether  
16 that's necessary; three quarters of that amount was going  
17 back to Vermont. Thus you have well over the five thousand  
18 dollars required for that charge.

21 What else was part of the agreement?  
22 Well, we'll submit the transportation of dynamite was part  
23 of that agreement. Remember, Mr. KIBLIN said, there's a  
24 safe in there, Ernie, or Mr. HARVEY, and you're going to  
25 need to bring some fire power. And Mr. HARVEY said, in  
26 substance, don't worry, we'll bring everything we need.

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1 Now, I want to comment for a moment on  
2 the, when I recite evidence to you, and when any of the  
3 attorneys do, or even when the Court does, we're all giving  
4 you our best recollection of what was said. You may remember  
5 the words a little differently, and I want to make it clear,  
6 there's no doubt about it, your recollection governs, not  
7 mine, not what any of the lawyers say, so if you disagree  
8 in some measure with what I say, it's your recollection that  
9 governs. I'm not trying to invade your province as fact-  
10 finders in this case.

12 Then, the third purpose of that conspiracy  
13 was to transport it - or I should go back to the second one.  
14 Clearly on the basis of that conversation, if you believe  
15 it, the transportation was for destructive purposes - I  
16 think you ladies and gentlemen can understand and agree there  
17 that that would be the case.

19 Then, the third object of that conspir-  
20 acy was that it was stolen, and in that regard, I again,  
21 you have to remember what Mr. KIBLIN said, that he didn't  
22 find it out that night, but there was a later time when  
23 Ernie HARVEY told him where he had gotten that dynamite  
24 and in essence, it was stolen, and you recall Mr. KIBLIN  
25 testifying as to that.

27 Let's talk briefly then about Count 2

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1 and how the proof relates to that. Count 2 was that there  
2 was the interstate transportation; now, this is different  
3 from the agreement to do it, because the Court will tell  
4 you, and the law is clear, that there can be two crimes;  
5 an agreement to do something, taking the steps, and in  
6 furtherance of it, and again, what you might call a substantive  
7 crime if you actually do it.

9 Count 2 charges them with actually,  
10 charges Mr. HARVEY with actually transportating that  
11 dynamite in interstate commerce for destructive purposes.  
12 Count 3 charges him with actually transporting it, having  
13 been a person convicted of a felony, and Count 4 charges  
14 him with transporting it or receiving it, knowing it was  
15 stolen. {

Now, I believe the Court will also charge  
you that in order to be guilty, you don't actually have to  
take the stuff in your hands and walk across the state line  
with it, or even be the person who put it in the car or took  
it out of the car. There's a concept in the law that if you  
assist in a crime, you aid it or abet it, those are the  
legal words, you're just as guilty as the principal.

I believe the Court will instruct you  
that you don't actually have to find the defendant on trial  
here, Mr. HARVEY, actually transported it himself, although

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1 I submit to you that you could make that finding on the  
2 basis of the evidence as before you.

3 Now, let's talk a little bit about  
4 Count 6. This is a different kind of charge; this is  
5 another conspiracy count, but a different conspiracy count,  
6 and charges a conspiracy or an agreement to violate civil  
7 rights of Byron NUTBROWN III, fifteen year old boy who is a  
8 citizen of the United States. It charges that that agreement  
9 existed, to Mr. HARVEY, Mr. DUNHAM and other persons, which  
10 you may or may not find, but please understand there's only  
11 Mr. HARVEY that is on trial before you. For reasons which  
12 you should not consider, it is only he who is on trial.

14 However, you can consider the evidence  
15 with respect to everybody to find out whether Mr. HARVEY  
16 agreed with anybody to violate Byron NUTBROWN's civil rights.  
17

18 Now, what right was that agreement about?  
19 What right did that agreement seek to violate? It is  
20 submitted and it is charged that it was an agreement to  
21 interfere with his anticipated testimony and statements  
22 with respect to Federal offenses. What Federal offenses?  
23 The Federal offenses charged in Counts 1 through 4 which I  
24 have just discussed with you; stolen property, the dynamite  
25 and so forth.

27 Now, I believe the Court will charge you

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1 that you don't have to find that that was the only reason  
2 for this conspiracy. It may well be that they wanted to  
3 silence Byron NUTBROWN also because of the New Hampshire  
4 case. If you find on the proof, and I submit to you that  
5 the proof on this is very clear, that if one, at least one  
6 of the purposes of that conspiracy to silence Byron NUTBROWN  
7 was to shut him up about Federal offenses, then the require-  
8 ments of the statute have been met.

10 What does the proof show with respect  
11 to Count 6? Ladies and gentlemen, I submit that you will  
12 find the proof is pretty grim with respect to Count 6.

13 You will recall the testimony of  
14 Mr. KIBLIN back the night of the burglary, and KIBLIN said,  
15 to Mr. HARVEY; what's that boy doing here; I don't want him  
16 here; he's only fifteen years old, how do you expect him to  
17 keep his mouth shut. Again, ladies and gentlemen, I'm givi  
18 you the substance of what was said and not the exact words.

20 Remember what HARVEY said according to  
21 KIBLIN? Mr. HARVEY said, don't worry about it, I'll take  
22 the full responsibility for it; if he ever makes a statement  
23 I'll kill him. And he turned around to Byron NUTBROWN, and  
24 he said; do you understand that? And the boy said yes.  
25 That's where this count, that's where the proof in this  
26 count starts, ladies and gentlemen.

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1 Now, was - how did we know that the  
2 purpose of this conspiracy was to shut him up for Federal  
3 offenses? Well, common sense will tell you a little bit  
4 about that. I'm not saying that was the only reason, but you  
5 must remember that there was a point in time when the State  
6 charges had been dismissed, and you remember George KIBLIN  
7 said that Ernie HARVEY came out confident that he was okay.  
8

9 George KIBLIN also said that they were  
10 concerned about the Federal charges because that's a different  
11 situation, that's a more serious situation. Why then kill  
12 Byron NUTBROWN? Because Byron NUTBROWN was in a position to  
13 say, and you know this from the statements that Byron NUTBROWN  
14 that have been introduced, and you will recall that these  
15 statements are relevant only for you to consider what he was  
16 in a position to say. They don't relate to the first counts  
17 of the indictment, you're not to consider them as proof of  
18 anything on the first counts. I submit to you there's plenty  
19 of proof on the first counts without Byron NUTBROWN's  
20 statements.

21 Byron NUTBROWN was in a position to say,  
22 I was with HARVEY and DUNHAM when they stole the dynamite,  
23 transported it to New Hampshire and were caught with it in a  
24 burglary. In substance, we know that.

25 Now, on the stolen part, you know that

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1 from George KIBLIN 'cause remember George said that when  
2 Ernie HARVEY told him the dynamite was stolen, that NUTBROWN  
3 was along on it, and that Ernie HARVEY had said the kid  
4 knows too much about this. Byron was thus in a position to  
5 tell the whole story, and had, in fact, started to do so,  
6 as Mr. HARVEY knew, and concerned Mr. HARVEY very, very much.  
7

8 Now, what is the defense in this case?  
9 We don't know all of the aspects, but I think we can tell  
10 from the cross examination and some of the matters that  
11 have gone on in this court room what the defense will be.

12 MR. GREENE: We'll going to object to  
13 anticipation, Your Honor, the Government will have their  
14 opportunity.

15 THE COURT: Mr. GRAY?

16 MR. GRAY: Your Honor, I think I can  
17 handle it in a way I think is permissible, I think I can  
18 handle it in a way that will be acceptable to all concerned.

19 THE COURT: All right, please do so.

20 MR. GRAY: Let me put it this way,  
21 ladies and gentlemen; it will be very surprising if  
22 Mr. GREENE doesn't argue that Mr. KIBLIN is a liar.

23 MR. GREENE: Again....

24 THE COURT: Well, we'll let that stand,  
25 that's all right, Mr. GREENE.

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1 MR. GRAY: If he's not going to argue  
2 that, I apologize to you and I apologize to him.

3 Let's talk about George KIBLIN; let's  
4 get one issue out of the way right here and now. It may be  
5 suggested to you that he's getting off scot-free. That's  
6 not entirely so; he's serving time in New Hampshire right  
7 now for the burglary.

8 MR. GREENE: We'll object that that  
9 testimony is closed.

10 THE COURT: No, this is proper argument,  
11 Mr. GREENE, and we'll take it, and you can certainly argue  
12 any way you wish.

13 MR. GREENE: Your Honor, we have no  
14 objection to counsel arguing what's been presented. Our only  
15 objection would be if he begins to introduce some matters  
16 which aren't already presented.

17 THE COURT: Well, counsel will keep in  
18 mind that you should stay in, as much as possible, within  
19 the evidence in this particular case, but we don't consider  
20 that this depart is so far from it that we have to caution  
21 counsel.

22 MR. GRAY: Thank you, Your Honor.

23 It was in evidence, ladies and gentlemen,  
24 that Mr. KIBLIN is in jail in New Hampshire as a result of

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1 his conviction on this case. I think you will recall that  
2 evidence.

3 Now, you have also heard evidence that  
4 Mr. KIBLIN will, at least probably and maybe even certainly,  
5 not be prosecuted for his role in the killing of Byron  
6 NUTBROWN. No one likes it when a person who participated  
7 in a crime, especially such a serious crime, gets away with  
8 it. But, ladies and gentlemen, you know from the truth in  
9 this case that without George KIBLIN, three persons would  
10 have gone unpunished in this case for that crime. And if  
11 immunity had to be granted to someone in this case, Mr. HARVEY,  
12 Mr. DUNHAM or Mr. KIBLIN, I submit, ladies and gentlemen,  
13 on the basis of what you know about this case, you can find  
14 that it was granted to the wrong person - right person, I'm  
15 sorry, in this case; not that that is an issue. You took an  
16 oath when you went into this jury box that you would be able  
17 to decide this on the facts presented to you even if you  
18 disagreed with that determination.

19 There's no question about it, ladies and  
20 gentlemen; George KIBLIN is important to this case. If you  
21 believe him, there's really very little else to talk about.

22 But there is other proof in this case  
23 that tells you that George KIBLIN was telling the truth.  
24 For example, Mr. KIBLIN says Ernie HARVEY was at the lumber

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1 yard and so does Officer Michael PATTEN of the Newport Police  
1 Department.

2 Also, with respect to Lavallee's, Mr.  
3 HARVEY's car was in the gravel pit; Mr. DUNHAM is in the car  
4 or around the car; we know that from the evidence. Mr.  
5 HARVEY's wallet was found in the car, and when Mrs. NUTBROWN  
6 goes to his house that night, having received a phone call,  
7 she doesn't see him there.

8 George KIBLIN says that HARVEY and  
9 DUNHAM planned and killed Byron NUTBROWN in order to  
10 silence him. How do we know George KIBLIN is telling the  
11 truth about this very important part of the case? Remember  
12 Mrs. NUTBROWN testified that around noon on September 8th,  
13 she saw her son go across the street, go into the Dunkin  
14 Donuts, sit down with Ernie HARVEY, come out, gets in the  
15 car, and that was the last time she saw him. That tells you  
16 a little bit about the activities on September 8th.

17 Mrs. DUNHAM testified in this case. She  
18 didn't testify to much, but I submit you can find that what  
19 she testified to was pretty important. She testified that  
20 on the night of September 8th or in the late afternoon, she  
21 drove her husband and George KIBLIN to a back road where  
22 they got out - that's just what George KIBLIN said too, I'm  
23 sure you remember that.

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1 By the way, Mr. GREENE did ask Mrs. DUNHAM  
2 whether she wasn't trying to help her husband by saying that.  
3 And I ask you, ladies and gentlemen, to consider, how is  
4 she helping him by putting him at the scene of that crime  
5 unless it's the truth?

6 George KIBLIN says I was there, I helped  
7 take some stuff out of the back of the car and I got out of  
8 there just about as fast as I could. Do you remember how he  
9 said that? And when I left, they had NUTBROWN, and they  
10 were holding him in a manner that he described.

12 Now, I'm sure, ladies and gentlemen,  
13 that when George KIBLIN was testifying, it occurred to you  
14 that maybe he was telling us only part of the truth, maybe  
15 he was there, and maybe Mr. DUNHAM and Mr. HARVEY were  
16 there, but maybe George KIBLIN was there too. It must have  
17 occurred to you that he was cutting corners a little bit  
18 to make himself look a little better. That's a pretty good  
19 question you should have been asking yourself. But remember  
20 the testimony of Mrs. BLONDIN and remember the testimony of  
21 Miss PAUL.

23 Both of them testified that about dusk  
24 that night, and we know it's that night because it was  
25 Miss PAUL's mother's birthday, and she doesn't forget that  
26 date, George KIBLIN came down to the BLONDIN house and he

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1 stayed there until 9:30 or 10:00 at night and it was very,  
2 very dark, and after taking Miss PAUL home, George KIBLIN  
3 goes up to the abandoned house or near the abandoned house,  
4 picks up DUNHAM and HARVEY, takes them back down the hill  
5 again, and you remember the conversation about the clothes,  
6 and you remember that matter, and you remember thereafter,  
7 Mr. and Mrs. HARVEY and Mr. and Mrs. DUNHAM took George  
8 home by taking him back to Claremont, New Hampshire.  
9

10 Now, remember also that Mrs. BLONDIN  
11 said she was a friend of Mr. HARVEY's, known him for some  
12 time, but also remember that Miss PAUL really doesn't know  
13 anybody in this case and really has no motive whatsoever  
14 to lie to you about any of the facts in this case.  
15

16 I'm about to finish, ladies and gentle-  
17 men, because I don't want to be a dead horse with respect  
18 to the facts in this case which I think I have said several  
19 times I think you can find speak for themselves. But there's  
20 another reason to believe George KIBLIN other than the  
21 reasons that I've submitted to you. I submit that you can  
22 find that there are two very good reasons for believing  
23 him; one is that his story makes sense; the second one is  
24 you saw him on the stand, you know from your daily life  
25 how to judge whether a witness, whether a person is telling  
26 you the truth or not and I submit to you that you can find  
27

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1 that George KIBLIN was telling you the truth, painful truth,  
2 yes, but the truth.

3 Now, I think you will agree that George  
4 KIBLIN, as I think I commented in my opening statement, was  
5 no angel. Mr. GREENE pointed out that he had the drinking  
6 problem. George KIBLIN himself admitted on direct testimony  
7 that he had stolen before, he had been convicted before  
8 and yet, ladies and gentlemen, as you saw him on the stand  
9 I submit that you could find there's still a little decency  
10 left in that human being. As wrong as he may have been, he  
11 had the decency to come in here, tell the truth about a  
12 matter which he was deeply ashamed. I think you can find that  
13 from the way he told it to you.

14 He could talk pretty casually about the  
15 plans to steal, how he'd gone into the place before, because  
16 I don't think that you will find that George KIBLIN is a  
17 kind of person who is very ashamed about stealing; he'd done  
18 it before and he's been caught at it before, but he was a  
19 different man and a different witness, I submit to you and  
20 suggest to you, when we was talking about the death and  
21 the plans of the death of Byron NUTBROWN, and I submit that  
22 from those facts and that perception yourself, and from your  
23 own common sense, you can judge whether or not George KIBLIN  
24 is telling you the truth or not.

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HERMAN J. VESPER  
OFFICIAL FEDERAL REPORTER  
P. O. BOX 141  
RUTLAND, VERMONT 05701

## GOVERNMENT'S CLOSING ARGUMENT - Gray

1                   There's no magic, ladies and gentlemen,  
2 for telling whether a witness is lying or telling the truth;  
3 you just have to apply your common sense, and it's that  
4 common strength that is the strength of the American jury  
5 system, and that's the common sense that you are to apply  
6 to the facts of this case.  
7

8                   Now, you will recall that at the  
9 beginning of the trial, your, during your selection,  
10 Mr. GREENE asked each and every one of you for a promise  
11 that if you didn't find that the Government had proven its  
12 case on any count or on all counts, that you would find  
13 the Defendant not guilty on either that count or all the  
14 counts. And that is your duty, no question about it  
15 whatsoever.  
16

17                   Mr. COOK did not ask you any promises, but  
18 the Government relies upon the oath and the duty and the  
19 responsibility of you ladies and gentlemen to do your duty  
20 because we believe that you will do so. If you find that  
21 the Government has not proven its case on any or all counts,  
22 you should dismiss it, but if you find the Government has  
23 proven its case, and I submit to you when you go into that  
24 jury room, on the basis of the evidence in this case you  
25 will find that the Government has proved its case in every  
26 part. It is your duty, ladies and gentlemen, to return a

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GOVERNMENT'S CLOSING ARGUMENT - Gray

verdict of guilty against the defendant, Ernest HARVEY.

Thank you for your attention.

(2:42 P.M.)

THE COURT: Mr. GREENE?

MR. GREENE: May it Please the Honorable Court, counsel, ladies and gentlemen of the jury, this will be the single time, as Mr. GRAY has stated, the single opportunity that I will have to speak to you in argument.

He has already stated that neither his argument nor mine should be considered evidence by you; the evidence is in, it's been given under oath. We have real evidence, we have a variety of objects and statements that constitute evidence, whether you wish to accept its value in proving the case or not.

These statements that we are making are not evidence but they are very important and it is very important that you realize that this will be my only chance to speak with you, and it's extremely important to me, and it's extremely important to the defendant in this case, as it would be in every case, but particularly in charges such as these, that you give the same attention to arguments that you have so graciously given to the evidence.

It's very important, and I may, from time to time, stop what I'm saying and tell you I'm about

HERMAN J. VESPER

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1 THE COURT: Ladies and gentlemen, the  
2 hour is such and the charge is relatively detailed and  
3 relatively long, and the Court, in its judgment, feels that  
4 the case should not be submitted to you this evening.

6 That being the case, we are going to  
7 take adjournment until 9:30 on Monday morning, at which time  
8 I will give you the charge.

9 Now, you've heard the arguments; you've  
10 received all of the evidence in this case, and after you  
11 have received the instructions of law that I will give you  
12 on Monday, and you will retire to your deliberations in the  
13 jury room, it's extremely important, ladies and gentlemen,  
14 important in this case both to the defendant, Mr. HARVEY,  
15 and to the people, the Government, that whatever decision  
16 you make and whatever determinations you make, and whatever  
17 the result is, is entirely your own.

19 And I have instructed you and cautioned  
20 you right from the beginning in this case that this must  
21 be the situation, these must be your own, must be your own  
22 determination, and therefore, once again, I caution you,  
23 please do not discuss this case with anyone, do not read  
24 anything about it or listen to anything about it or hear  
25 anything about it, so that when you do receive the Court's  
26 Charge and do retire to the jury room, whatever deliberations

